

of the miner's physical condition, demonstrates the presence of a totally disabling respiratory or pulmonary impairment.

(b) *Rebuttal of interim presumption.* In adjudicating a claim under this subpart, all relevant medical evidence shall be considered. The presumption in paragraph (a) of this section shall be rebutted if:

(1) The evidence establishes that the individual is, in fact, doing his usual coal mine work or comparable and gainful work (see § 410.412(a)(1) of this title); or

(2) In light of all relevant evidence it is established that the individual is able to do his usual coal mine work or comparable and gainful work (see § 410.412(a)(1) of this title); or

(3) The evidence establishes that the total disability or death of the miner did not arise in whole or in part out of coal mine employment; or

(4) The evidence establishes that the miner does not, or did not, have pneumoconiosis.

(c) *Applicability of part 718.* Except as is otherwise provided in this section, the provisions of part 718 of this subchapter as amended from time to time, shall also be applicable to the adjudication of claims under this section.

(d) *Failure of miner to qualify under the presumption in paragraph (a) of this section.* Where eligibility is not established under this section, such eligibility may be established under part 718 of this subchapter as amended from time to time.

**§ 727.204 Presumption of entitlement applicable to certain death claims.**

(a) In the case of a miner who died on or before March 1, 1978, who was employed for 25 or more years in one or more coal mines prior to June 30, 1971, the eligible survivors of such miner shall be entitled to the payment of benefits, unless it is established that at the time of death such miner was not partially or totally disabled due to pneumoconiosis. Eligible survivors shall, upon request by the Office, furnish such evidence as is available with respect to the health of the miner at the time of death, and the length of the miner's coal mine employment.

(b) For the purpose of this section a miner will be considered to have been "partially disabled" if he or she had reduced ability to engage in his or her usual coal mine work or "comparable and gainful work" (see part 718 of this subchapter as amended from time to time).

(c) In order to rebut this presumption the evidence must demonstrate that the miner's ability to perform his or her usual and customary work or "comparable and gainful work" was not reduced at the time of his or her death or that the miner did not have pneumoconiosis.

(d) The following evidence alone shall not be sufficient to rebut the presumption:

(1) Evidence that a deceased miner was employed in a coal mine at the time of death;

(2) Evidence pertaining to a deceased miner's level of earnings prior to death;

(3) A chest X-ray interpreted as negative for the existence of pneumoconiosis;

(4) A death certificate which makes no mention of pneumoconiosis.

**§ 727.205 Effect of current coal mine employment or coal mine employment at the time of death.**

In the case of a miner who is working in coal mine employment or was employed in coal mine employment at the time of death, the following shall apply:

(a) A deceased miner's employment in a mine at the time of death shall not be used as conclusive evidence that the miner was not totally disabled. In the case of a deceased miner who was employed in a coal mine at the time of death, all relevant evidence, including the circumstances of such employment and the statements of the miner's spouse, shall be considered in determining whether the miner was totally disabled due to pneumoconiosis at the time of death. In the case of a living miner, if there are changed circumstances of employment indicative of reduced ability to perform his or her coal mine work, the miner's employment in a mine shall not be used as conclusive evidence that the miner is not totally disabled.

(b) Notwithstanding any other provision of this section, and except as provided in section 411(c)(3) of the act, no miner shall be found to be totally disabled if the miner is found to be doing his or her customary coal mine work or "comparable and gainful work" (see § 410.412(a)(1) of this title) and there are no changed circumstances of employment indicative of reduced ability to perform coal mine work.

(c) No miner who is engaged in coal mine employment shall (except as provided in section 411(c)(3) of the act) be entitled to any benefits under this part while so employed. Any miner who has been determined to be eligible for benefits for any period during which such miner is engaged in coal mine employment shall be entitled to benefits if the miner's employment terminates within 1 year after the date such determination becomes final (see § 725.503A of this subchapter).

**§ 727.206 Quality standards applicable to evidence.**

(a) No chest X-ray or X-ray report, ventilatory study or blood gas study which does not or did not meet the quality standards applicable at the time the evidence was submitted shall be considered sufficient to invoke the interim presumption provided in § 727.203(a) of this part. With respect to evidence submitted prior to the effective date of part 718 of this title, the standards to be applied in the evaluation of evidence are contained in subpart D of part 410 of this title. Evidence submitted after the effective date of the revised part 718 shall be evaluated as provided in that part.

(b)(1) In all claims where there is other evidence of a pulmonary or respiratory impairment, a board-certified or board-eligible radiologist's interpretation of a chest X-ray shall be accepted by the Office if the X-ray is in compliance with the requirements of § 410.428(b) of this title and if such X-ray has been taken by a radiologist or qualified radiologic technologist or technician and there is no evidence that the claim has been fraudulently represented.

(2) The following definitions shall apply when making a finding in accordance with this paragraph:

(i) The term "other evidence" means medical tests such as blood-gas studies, pulmonary function studies or physical performance tests, physical examinations or medical histories which establish the presence of a chronic respiratory or cardio-pulmonary condition and the spouse's affidavit except that the spouse's affidavit alone shall not be sufficient in the case of a living miner to establish the existence of a respiratory or pulmonary impairment. In the case of a deceased miner, in the absence of medical evidence to the contrary, affidavits of persons with knowledge of the miner's physical condition may be sufficient to establish the presence of a respiratory or pulmonary impairment.

(ii) "Pulmonary or respiratory impairment" means an inability of the human respiratory apparatus to perform satisfactorily one or more of the three components of respiration, viz., ventilation, perfusion, and diffusion.

(iii) "Board-certified" means certification in radiology or diagnostic roentgenology by the American Board of Radiology, Inc. or the American Osteopathic Association.

(iv) "Board-eligible" means the successful completion of a formal accredited residency program in radiology or diagnostic roentgenology.

(v) "Qualified radiologic technologist or technician" means an individual who is either certified as a registered technologist by the American Registry of Radiologic Technologists or licensed as a radiologic technologist by a State licensing board.

**Subpart D—Payment of Benefits/  
Liability**

**§ 727.300 Conditions and duration of eligibility.**

The provisions of subpart B of part 725 of this subchapter shall be applicable in determining the conditions and duration of eligibility applicable with respect to a claim approved under this part.